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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. FAIRMONT SPECIALTY GROUP et al., Defendants and Appellants.	H032297 (Santa Clara County Super. Ct. No. CC769406)

Appellants bail agent Bad Boys Bail Bonds (Bad Boys) and surety Fairmont Specialty Group (Fairmont) challenge the denial of their motion to vacate a bail forfeiture. They assert that they were entitled to vacation of the forfeiture upon their presentation of evidence that they had never received any notices of forfeiture. As the trial court could have concluded that the clerk had mailed the notices in compliance with the statutory requirement, notwithstanding the fact that appellants had failed to receive the notices, the court was not obligated to vacate the forfeiture. Accordingly, we affirm.

I. Background

On June 16, 2007, Bad Boys posted a $60,000 bail bond to secure the appearance of a criminal defendant on June 27, 2007. Fairmont was the surety for Bad Boys on the bond. The criminal defendant failed to appear on June 27, 2007, and a bench warrant was issued for his arrest. The clerk's minutes reflect that the court ordered the bail

forfeited. On July 2, 2007, the clerk of the court issued a notice of bail forfeiture that stated that the bail had been forfeited on June 27, 2007. The clerk certified under penalty of perjury that the clerk had served the notice on July 2, 2007 by sending copies of the notice to both Fairmont and Bad Boys.

On September 19, 2007, Fairmont and Bad Boys moved to vacate the forfeiture and exonerate the bail. They asserted that the court had lost jurisdiction over the bond because the clerk had failed to mail the notice of forfeiture to Bad Boys and Fairmont at the addresses listed on the bond. Bad Boys and Fairmont submitted declarations by their employees that no notice of forfeiture had been received by either entity. At the hearing on the motion, the court found that the evidence did not disclose whether the non-receipt was due to an error by the clerk in failing to mail the notices, or an error by the postal service in failing to deliver the notices. The motion was denied, and Fairmont and Bad Boys filed a timely notice of appeal.

II. Analysis

"If the amount of the bond . . . exceeds four hundred dollars ($400), the clerk of the court shall, within 30 days of the forfeiture, mail notice of the forfeiture to the surety . . . . At the same time, the court shall mail a copy of the forfeiture notice to the bail agent whose name appears on the bond. The clerk shall also execute a certificate of mailing of the forfeiture notice and shall place the certificate in the court's file. . . . [¶] If the surety is an authorized corporate surety, and if the bond plainly displays the mailing address of the corporate surety and the bail agent, then notice of the forfeiture shall be mailed to the surety at that address and to the bail agent, and mailing alone to the surety or the bail agent shall not constitute compliance with this section. [¶] The surety or depositor shall be released of all obligations under the bond if any of the following conditions apply: [¶] (1) The clerk fails to mail the notice of forfeiture in accordance with this section within 30 days after the entry of the forfeiture. [¶] (2) *The clerk fails to*

mail the notice of forfeiture to the surety at the address printed on the bond. [¶] (3) *The clerk fails to mail* a copy of the notice of forfeiture to the bail agent at the address shown on the bond." (Pen. Code, § 1305, subd. (b), italics added.)

"[T]here is an evidentiary presumption a court clerk regularly performs his or her duties." (*American Contractors Indem. Co. v. County of Orange* (2005) 130 Cal.App.4th 579, 583; Evid. Code, § 664.) "[T]he effect of the rebuttable presumption created by section 664 is merely 'to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact.'" (*California Advocates for Nursing Home Reform v. Bonta* (2003) 106 Cal.App.4th 498, 505.) Thus, Fairmont and Bad Boys bore the burden of proof that the clerk had failed to mail copies of the notice of forfeiture to them.

Bad Boys and Fairmont contend that their evidence that they had not *received* the notices required the trial court to conclude that the clerk had *failed to mail* the notices to them. Not so. As the trial court noted, the evidence presented by Bad Boys and Fairmont was not inconsistent with a conclusion that the clerk *mailed* the notices, but the postal service failed to *deliver* them.

Bad Boys and Fairmont rely heavily on *Bonzer v. City of Huntington Park* (1993) 20 Cal.App.4th 1474 (*Bonzer*). In *Bonzer*, a writ was granted after the City of Huntington Park's counsel failed to appear at a mandamus hearing. The City of Huntington Park (the City) subsequently sought relief under Code of Civil Procedure section 473 on the ground that it had failed to receive actual notice of the hearing. (*Bonzer*, at p. 1477.) The City submitted ample credible evidence that it had never received notice of the hearing. The trial court denied the City's motion, and the City appealed. The Court of Appeal reversed. Noting that the applicable standard required the trial court to resolve all doubts in favor of the party seeking relief from the default (*Bonzer*, at pp. 1477-1478), the Court of Appeal held that the trial court was obligated to

grant the motion because the City had established by credible proof that it had lacked actual notice.

Bonzer is readily distinguishable from the case before us. The City's motion for relief from default in *Bonzer* was based on a lack of *actual notice*, and the trial court in *Bonzer* was required to resolve all doubts in favor of relief. Here, on the other hand, the motion to vacate was based on an allegation that the clerk had *failed to mail* the notices, and the court was *not* obligated to resolve all doubts in favor of vacating the forfeiture.

"The determination of a motion to set aside an order of forfeiture is entirely within the discretion of the trial court, not to be disturbed on appeal unless a patent abuse appears on the record." (*People v. Wilcox* (1960) 53 Cal.2d 651, 656.) The trial court was well within its discretion in concluding that the evidence submitted by Bad Boys and Fairmont was insufficient to prove that the clerk had failed to mail the notices to them. The motion could not succeed in the absence of proof that the clerk *had not mailed* the notices. Evidence that the notices *had not been received* merely raised the *possibility* that this arose from a failure to mail the notices. Given that there were other possible reasons for the non-receipt of the notices, the court could reasonably conclude that the clerk had in fact mailed the notices. The trial court did not abuse its discretion in denying the motion to vacate.

III. Disposition

The order is affirmed.

Mihara, Acting P. J.

WE CONCUR:

McAdams, J.
Duffy, J.